IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF CALIFORNIA

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| SUN PACIFIC FARMING COOPERATIVE, INC., Plaintiff, vs. SUN WORLD INTERNATIONAL, Defendant. | No. CV-F-01-6102 REC/DLB<br><br>FINDINGS OF FACT AND CONCLUSIONS OF LAW |
| SUN WORLD INTERNATIONAL, INC., Counter-Claimant, vs. SUN PACIFIC FARMING COOPERATIVE, INC., SUN PACIFIC FARMING CO, BERNIE H. EVANS III and RICHARD PETERS, Counter-Defendants. | |

Based on the undisputed facts set forth in the Pretrial Order, the evidence and testimony presented at trial on January 27, 2004 and the written and oral arguments of the parties, the court finds for defendant/counter-claimant Sun World International, Inc. and against plaintiff Sun Pacific Farming Cooperative, Inc and counter-defendants Sun Pacific Farming Cooperative, Inc., Sun Pacific Farming Co., Bernie H. Evans III and Richard Peters.

**I. UNDISPUTED FACTS.**

The following undisputed facts are set forth in the Pretrial Order filed on October 30, 2003 and are adopted as findings of fact:

1. In 1972, Superior Farming Company (hereinafter Superior Farming) completed a transaction with John Garabedian, Bertha Garabedian, Richard Peters, Barbara Peters, the Panoche Land Company and the Peters & Garabedian partnership concerning the sale of certain real and personal property and intellectual property rights. The precise terms and effect of the 1972 transaction are in dispute in this action.

2. In 1972, Superior Farming was a wholly-owned subsidiary of Superior Oil Company. Prior to the 1972 transaction at issue in this action, Superior Farming had approximately 300 year round employees. Superior Oil Company had approximately 5,000 employees and was worth approximately six billion dollars in 1972.

3. Sun World International, Inc. (hereinafter Sun

World) is the successor-in-interest to the Superior Farming Company. Sun World owns the legal rights to the Sugarone grape variety that were acquired by Superior Farming Company in 1972.

4. Sun World sells Sugarone grapes in the United States under its trademark "Superior Seedless®."

5. The Sugarone is a seedless grapevine variety.

6. Because it is a seedless variety, one cannot reproduce or propagate the Sugarone from the grapes. Sugarone can be propagated only by using cuttings or propagating material from an existing vine.

7. John Garabedian (hereinafter Garabedian) submitted an application for a United States plant patent for what was later named the Sugarone on or about April 29, 1970. In his patent application, Garabedian stated under oath that he invented this variety.

8. The United States Patent and Trademark Office issued a United States Plant Patent, No. 3,106 to Garabedian on April 11, 1972. The patent issued to Garabedian as the sole inventor, and recites Garabedian's representation that the Sugarone grapevine "was originated by me, on a ranch of which I am owner ... as a cross between the Cardinal and an unnamed sport (unpatented) previously found by me in a vineyard (of which I am also the owner) located near Fresno, Fresno County, California. The seedling vine, which resulted from the above described cross, was maintained by me under careful control and continuing observation."

9. Richard Peters (hereinafter Peters) reviewed the Sugarone plant patent application and patent, and never made any efforts to be added to the patent application or patent as a named inventor.

10. At the time Garabedian submitted an application for a patent for the Sugarone, he was a partner in the farming partnership Peters & Garabedian.

11. The Sugarone was the subject of a pending patent application at the time of the 1972 transaction.

12. In 1970, the parties commenced negotiations over the sale of Garabedian's farming business. At that time, Garabedian told Superior Farming that "our products ... are exclusively patented, and grown and shipped only by ourselves."

13. Garabedian had an initial meeting with Superior Farming's president, Fred Andrew, and its vice-president, Milo Hall. In that initial meeting, Garabedian told Andrew and Hall that he had produced many patented varieties over the years, and that he sold the fruit but not the varieties. "He did not want people competing with him by shipping his fruit at a time when it would not be ready because the trade would not accept it as well."

14. Milo Hall and Fred Andrew conducted the negotiations of the 1972 acquisition on behalf of Superior Farming; Hall and Andrew negotiated the terms of the 1972 transaction with Garabedian.

15. Garabedian conducted the negotiations with Peters'

authority and permission, and Peters was relying on Garabedian "one hundred percent" to drive the acquisition."

16. Peters owned some land that was sold to Superior Farming in the acquisition.

17. Superior Farming had no discussions or negotiations with Peters concerning the terms of the 1972 transaction. Garabedian kept Peters informed of the negotiations concerning the portion of the transaction which involved Peters' interest.

18. In September 1971, Superior Farming and Garabedian signed a Letter of Intent. The Letter of Intent specified that Garabedian "would turn over to Superior Farming Company [his] entire business of raising and marketing patented varieties of fruits and grapes" and that subject to final acquisition documents being signed, Superior Farming "agrees to acquire and take over from you, and you agree to transfer and turn over to Superior, your entire business of raising and marketing patented fruits and grapes." Superior Farming agreed to pay a share of the proceeds it received from the sale of patented fruits and grapes during the life of each transferred patent. In addition, the Letter of Intent contained various provisions regarding the handling and disposition of Garabedian's patented varieties.

19. Milo Hall was never informed of any "exclusive" varieties of Garabedian's that were not the subject of a patent or a patent application.

20. Garabedian told Superior Farming during the

negotiations that "all of us in our organization are firmly convinced that our new variety of grapes [the Sugarone variety] will shortly dominate the market to such a degree that it will virtually eliminate competition."

21. The December 9, 1971 memorandum by Eugene Teal notes, in the first bullet point under the heading "1. MARKETING," that: "Some valuable varieties are not yet patented and their value would be lessened if they did not receive patents."

22. During the negotiations, Garabedian stated that he was "quite concerned about some provision [being made] for Richard Peters," and wanted to ensure that there be "some incentive provision out of this deal to hold [him] and retain [his] interest in the Garabedian varieties and operation."

23. In September 1971, Garabedian offered two suggestions to Superior Farming to accommodate his concern for Peters' interests: (1) that Peters be allowed to retain his present position and salary "but, in addition, to provide [him] with some consulting fee"; or (2) that Peters be allowed "to grow some of [Garabedian's patented] varieties on [his] own."

24. Superior Farming considered and rejected Garabedian's suggestion that Peters be allowed to grow any of the patented varieties.

25. Garabedian reported that rejection to Peters and thereafter Peters considered the issue to be "dead."

26. Prior to January 1972, the Sugarone variety was

planted on four properties: three properties in Oasis, California, and one in Mecca, California.

27. One of the two pieces of real estate sold by Peters in the 1972 acquisition was the Mecca ranch, located in the Coachella Valley, Riverside County. The Mecca ranch was owned by Peters, Garabedian and their wives as joint tenants.

28. In January 1972, Peters visited the Mecca ranch (property that was to be transferred to Superior Farming in the acquisition), took cuttings from Sugarone vines growing on the property, and transferred the cuttings to the property of a friend of his - property not involved in the acquisition.

29. In January 1972, the patent on the Sugarone variety was pending but had not yet issued. (As found above, Garabedian submitted his application for a United States plant patent for the Sugarone on or about April 29, 1970).

30. Peters testified that he could not remember telling Garabedian (the Sugarone's named inventor) that he transferred Sugarone cuttings to property not involved in the acquisition.

31. In January 1972, Superior Farming's Board of Directors approved the acquisition.

32. Pursuant to the 1972 acquisition, Superior Farming collectively paid John Garabedian, Bertha Garabedian, Richard Peters, Barbara Peters, the Panoche Land Company and the Peters & Garabedian partnership more than $7 million.

33. The parties executed the acquisition through a

series of documents constituting an integrated contract - including principally, the Agreement, the Bill of Sale, and the Assignment - executed in March and April 1972.

34. Peters did not draft or sign the Agreement, and did not negotiate or discuss it with Superior Farming.

35. Peters signed the Bill of Sale because he had an ownership interest in two pieces of real estate - including the Mecca Ranch - that were being sold to Superior Farming.

36. Peters did not draft or sign the Assignment, and did not negotiate or discuss it with Superior Farming.

37. Pursuant to the Agreement, John Garabedian, Bertha Garabedian, Richard Peters, Barbara Peters, the Panoche Land Company and the Peters & Garabedian partnership sold certain parcels of real estate, personal property and equipment, trademarks, patents and patent applications to Superior Farming.

38. The Agreement effected a transfer of "certain parcels of real property in Fresno, Madera, Riverside and Imperial Counties, California, certain personal property and equipment and certain patents, patent applications and trademark rights as follows:" which are listed in numbered paragraphs 1-3 of the first page of the 1972 Agreement. These paragraphs recite the sale of real property (Exhibits A, B, C and D to Appendix 1 of the 1972 Agreement), personal property (Exhibit E to Appendix 1 of the 1972 Agreement), patents and patent applications (Exhibit F to Appendix 1 of the 1972 Agreement) and two trademarks for $7,711,750.00.

39. Exhibits A-D of Appendix 1 of the 1972 Agreement transferred real estate. Exhibit E of Appendix 1 of the 1972 Agreement is a 35 page list of the over 500 transferred items of personal property. Exhibit F of Appendix 1 to the 1972 Agreement is a list of the transferred patents and patent applications.

40. The Bill of Sale, dated April 8, 1972, states: "Sellers have bargained, sold and delivered and by these presents do bargain, sell and deliver unto Buyer all of their right, title and interest in and to that certain personal property, equipment and improvements described and identified in Exhibits E, F, and G attached hereto and hereby made a part hereof, together will all personal property, fixtures and improvements including trees, vines and growing fruit, affixed to or situated on the lands described in said Exhibits A, B, C, and D whether or not the same are specifically enumerated in said Exhibits E, F, or G. This sale is made without any warranty or representation as to the condition of the property herein sold and delivered, however, Sellers warrant that they are the owners of said property and the same is free of all liens and encumbrances and that they have the right to sell and deliver the same to Buyer."

41. In the Assignment, Garabedian represented that he was "the owner of the entire right, title, and interest in the patents and patent applications identified on the attached Schedules A and B and make this sale and assignment free and clear of all licenses, encumbrances, liens and security interests whatsoever, and that I have not executed and will not execute any

instruments or enter into any agreements in conflict herewith."

42. The Sugarone patent application is listed on Schedule B to the Assignment.

43. The Assignment conveyed to Superior Farming various enumerated rights, including principally (a) "the entire right, title and interest in and to all plant patents and plant patent applications owned or controlled by me, including the plant patents and plant patent applications identified on the attached Schedules A and B"; (b) "the entire right, title and interest in and to any and all United States and foreign patents and legal protection now or hereafter obtained for all plants therein set forth, shown or described including reissues, extensions and additions"; (c) "the entire right, title and interest in and to any and all applications for patents on such plants in the United States and foreign countries, including any division, continuation, continuation-in-part, substitute or addition"; (d) "the right to make application for and obtain patents and legal protection on such plants in the United States and foreign countries, specifically including the right to file foreign applications for patent under the provisions of any convention or treaty and claim priority based on any application for patent in the United States"; (e) "the right to bring suit for past infringement of any and all such patents"; (f) "and the entire right, title and interest in the recovery for such past infringement."

44. The Assignment also included Garabedian's

agreement to "hereby covenant and bind myself, my executors, administrators and personal representatives, without further consideration, but at no undue expense without reimbursement, to communicate to SUPERIOR, its successors, assigns and nominees, whenever requested, all information in my or their possession or control respecting such plants, patents and applications; to testify and join as a litigant in any legal proceeding, to sign and deliver all lawful papers, execute all divisional, continuing, reissue and foreign application and make all rightful oaths and statements relating to such plants as requested by SUPERIOR, its successors and assigns, to apply for, obtain, maintain and enforce protection for such plants in all countries and to effectuate the purposes of this instrument."

45. Garabedian and Superior Farming also entered into a Royalty Agreement. Pursuant to this agreement, Garabedian was to be paid a royalty on revenues derived for ten years from Superior Farming's sale of the fruit from the patented varieties sold to Superior Farming pursuant to the 1972 Agreement, including the Sugarone.

46. After the acquisition was completed, Superior Farming and Peters entered into a "Farm Management Agreement," by which Peters was paid $15,000 per year plus a fee based on each unit of fruits or grapes produced and sold from the land subject to the Farm Management Agreement.

47. On July 6, 1972, Superior Farming sent a memorandum to all personnel, stating: "No patented varieties of

fruit or grapes are to be planted on any property other than that land which belongs to Superior Farming Company and is so designated to be planted to that variety. This includes home plantings by our personnel, on or off Superior Farming Company property. You may be asked from time to time if someone may have 'just one cutting' for home plantings. This is in direct contradiction to our rules. We do not sell any breeding stock from these varieties, and we can get into a great deal of trouble should any get away from our ranches."

48. On October 20, 1980, eight years after the execution of the 1972 acquisition, Garabedian and Superior Farming entered into an agreement which settled various lawsuits which were pending between these two parties.

49. The patent on the Sugarone variety expired in 1989.

50. Peters transferred the Sugarone vines derived from the cuttings from the Mecca ranch to Sun Pacific Farming Cooperative, Inc. (hereinafter Sun Pacific) in 1993.

51. In August 2001, Sun Pacific agreed to indemnify Peters against litigation based on "the possession, propagation, or sale of Superior Seedless/Sugarone grapes or vines."

52. Sun Pacific has sold 672 boxes of Superior Seedless grapes at approximately twelve dollars a box.

## II. FINDINGS OF FACT.

In addition to the facts set forth above, the Court finds the following facts based on evidence and testimony presented at

trial:

53. Garabedian maintained control over his varieties and therefore was in a position to convey exclusive control over the Sugarone variety to Superior Farming.

54. Garabedian sold the fruit from his varieties. Garabedian did not sell the plants or cuttings from which further plants could be grown because Garabedian did not want other growers competing with him with respect to those varieties.

55. Peters confirmed that maintaining control over Garabedian's exclusive varieties was an important aspect of their business before it was sold to Superior Farming.

56. Garabedian and Superior Farming contemplated and agreed while negotiating the acquisition that the acquisition would transfer to Superior Farming exclusive control over Garabedian's varieties, including the Sugarone.

57. The Sugarone grapevine was one of Garabedian's exclusive varieties and the negotiating parties - Garabedian and Superior Farming - regarding the Sugarone as a pivotal component of the acquisition.

58. Throughout the negotiations Superior Farming understood that Garabedian was negotiating on behalf of himself and the other sellers who were involved in the acquisition, i.e., Bertha Garabedian, Richard and Barbara Peters, the Panoche Land Company, and the Peters & Garabedian partnership.

59. Garabedian did in fact negotiate the acquisition on behalf of himself and the other sellers, including Peters.

60. Peters asked, through Garabedian, for permission to grow some of Garabedian's proprietary varieties "following the transaction." Peters acknowledged that Superior Farming explicitly rejected his request, and that thereafter Peters understood this issue was "dead."

61. The contracting parties understood and intended that this explicit rejection by Superior Farming prohibited Peters from keeping any Sugarone vines following the acquisition.

62. The contracting parties did not authorize Peters during the negotiations to take and keep Sugarone vine cuttings from that land that he and his partners sold to Superior Farming.

63. Superior Farming's express intention was to acquire, and the sellers' intention as communicated to Superior Farming was to sell, all rights in the Sugarone variety and all existing Sugarone vines.

64. On August 4, 1971, Superior Farming sent Garabedian a letter containing "a very general accumulation of [his] thoughts." The letter states that "Superior Farming Company and Garabedian both agree that none of Garabedian's patented varieties will be sold, given away, or, in any other way whatsoever, be permitted to be propagated by any other grower." The letter also addresses the fact that some of Garabedian's property that was planted with patented varieties was better suited for real estate development and thus would not be sold to Superior Farming. Consequently, "Garabedian lands that are sold for real estate purposes will provide that all trees and vines

remain in Garabedian's custody until the same amount of acreage and variety is in production on Superior lands, then, all trees and vines on the lands will be pulled out and destroyed." Both of these provisions reflect the parties' intent and understanding that the acquisition would transfer control over Garabedian's exclusive varieties to Superior Farming.

65. In September 1971, Superior Farming and Garabedian signed a Letter of Intent. The contracting parties understood the Letter of Intent to set up a transfer of control over Garabedian's exclusive varieties - including the Sugarone variety.

66. Peters testified that this understanding, that Garabedian was going to transfer and turn over to Superior Farming his entire business of raising and marketing fruits and grapes, was consistent with what Peters understood the transaction's purpose to be.

67. The contemporaneous negotiation documents evidence the parties' intent to transfer to Superior Farming the exclusive rights to all Sugarone assets, including all existing Sugarone vines.

68. At no point during the acquisition negotiations did Peters personally discuss with any Superior Farming representative the notion that he be allowed to keep or grow any of Garabedian's exclusive varieties.

69. The contracting parties agreed during the acquisition negotiations that all exclusive varieties that were

planted on land not acquired by Superior Farming would be ripped up and destroyed after the acquisition closed. The parties' agreement to destroy all known plantings of the patented varieties on all land not acquired by Superior Farming evidences that control over Garabedian's exclusive varieties was central to the acquisition.

70. Prior to 1972 and throughout the two year period that Garabedian and Superior Farming were negotiating the acquisition, the Sugarone variety was planted on four properties: three properties in Oasis, California, and one in Mecca, California.

71. During the negotiations, Garabedian represented to Superior Farming that those four properties were all of the land on which the Sugarone variety was growing.

72. Representatives of Superior Farming, including Milo Hall, inspected the Oasis and Mecca properties, along will all other properties on which Garabedian's exclusive varieties were planted.

73. Peters secretly transplanted vines from the Mecca ranch after Superior Farming inspected the Mecca ranch and shortly before Peters signed the Bill of Sale.

74. Peters admitted that, but for his secret conduct, the sale of the Mecca ranch and the properties in Oasis, California would have transferred all existing Sugarone vines to Superior Farming.

75. Peters' testimony that he did not move Sugarone

vines from the Mecca ranch and that he only took cuttings is not credible and is not material because Superior Farming rejected Peters' request via Garabedian to grow the Sugarone variety after the acquisition closed.

76. To obtain control over the Sugarone variety, Superior Farming purchased all of the land on which Garabedian had represented the Sugarone was growing, purchased title to the vines on that land, and obtained an assignment of the intellectual property rights to the Sugarone variety.

77. In pertinent part, the Agreement transferred to Superior Farming all of the land on which Garabedian had represented Sugarone vines were growing, i.e., the Oasis and Mecca properties.

78. By specifically enumerating the real, personal and intellectual property transferred from the sellers to Superior Farming, the parties to the 1972 acquisition intended the Agreement to effectuate a complete transfer of the sellers' proprietary fruit business, not to serve as a limit on the transfer.

79. Garabedian and Peters expressly represented in the Bill of Sale that they had "sold and delivered ... all of their right, title and interest in and to ... all personal property, fixtures and improvements including trees, vines and growing fruit, affixed to or situated on [the Oasis and Mecca properties] whether or not the same are specifically enumerated."

80. By tendering in the Bill of Sale "all personal

property, fixtures and improvements including trees, vines and growing fruit, affixed to or situated on the lands described," which included the Mecca Ranch, Peters effected a transfer of all Sugarone vines growing on his property.

81. The Bill of Sale that Peters signed conveyed "all ... right, title and interest" in all of the property related to the Sugarone business, including the "personal property," the "fixtures," and "growing fruit".

82. The Bill of Sale that Peters signed conveyed, among other things, "all ... vines".

83. The acquisition documents evidence an intent to transfer all Sugarone assets.

84. The parties understood and intended that the Agreement, the Bill of Sale and the Assignment transferred all rights, title and interest and exclusive control in the Sugarone variety to Superior Farming.

85. Milo Hall's testimony regarding the contracting parties' understanding and intent with respect to the scope of the acquisition is credible and the contrary testimony of Peters is not credible.

86. Superior Farming would not have executed the acquisition if Superior Farming had known that it was not acquiring exclusive control of the Sugarone variety.

87. The parties to the 1972 acquisition did not intend that Peters be allowed to keep plant cuttings from the Sugarone variety.

88. Peters knew that a term of the 1972 acquisition was the transfer of all existing Sugarone vines to Superior Farming. His testimony to the contrary is not credible.

89. Peters never told Garabedian or Superior Farming that he had taken Sugarone cuttings from the Mecca Ranch and transplanted them on land not involved in the acquisition.

90. Superior Farming obtained all rights, title and interest in the Sugarone variety pursuant to the 1972 acquisition.

91. Pursuant to the 1972 acquisition, Superior Farming paid approximately $7,700,000 to the sellers, principally for the exclusive rights to the Sugarone variety.

92. After the acquisition closed, Superior Farming personnel supervised the destruction of all known plantings of Garabedian's exclusive varieties that were planted on land that Superior Farming had not acquired.

93. After the acquisition, Superior Farming's internal and external documents state that Superior Farming has exclusive control over the exclusive varieties it acquired in the acquisition, documents which are probative of Superior Farming's intent and understanding regarding the 1972 acquisition.

94. The July 6, 1972 memorandum Superior Farming sent to affiliated personnel instructed them that no exclusive varieties could be planted on property other than Superior Farming's because maintaining exclusive control over these varieties was critical to the company.

95. Superior Farming's licensee agreements confirm that Superior Farming understood that it had acquired exclusive control over the Sugarone variety, documents which are also probative of Superior Farming's intent and understanding regarding the 1972 acquisition.

96. The 1980 Garabedian Settlement Agreement does not directly concern the Sugarone variety. However, the Settlement Agreement contains Garabedian's representation that Superior Farming "has exclusive right, title and/or interest" in the Sugarone variety, as well as all other varieties transferred to Superior Farming by virtue of the 1972 acquisition.

97. Garabedian's representation in the 1980 Settlement Agreement is probative of his intent and understanding regarding the 1972 acquisition.

98. The 1980 Settlement Agreement confirms that Superior Farming understood that it had acquired exclusive control over the Sugarone variety and is probative of Superior Farming's intent and understanding regarding the 1972 acquisition.

99. Peters infringed the Sugarone patent by propagating Sugarone vines during the patent period.

100. Sun World has incurred compensatory damages of no less than $8,064 based on Sun Pacific's sale of 672 boxes of Sugarone grapes at approximately $12 a box.

## III. CONCLUSIONS OF LAW

Each conclusion of law is independent of all other

conclusions of law and each provides an independent basis that Sun World is entitled to judgment on claims one, three, and nine.

**A. California Contract Law.**

California Civil Code § 1635 et seq. governs the interpretation of contracts in California. Pursuant to the Civil Code, "[t]he fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties." In determining the parties' intent, the court must (1) consider all of the provisions of the contract or contracts and give full meaning and effect to each provision, (2) avoid any construction that results in an absurdity, and (3) look to the circumstances surrounding the contract's execution, including the negotiations leading to the contract.

As codified in California Code of Civil Procedure § 1856, California's parol evidence rule provides that terms set forth in a writing may not be contradicted by parol evidence. However, "[t]he terms in a writing ... may be explained or supplemented by evidence of consistent additional terms.' Even where there is an integrated writing, "extrinsic evidence is admissible ... if it is relevant to prove a meaning to which the language of the instrument is reasonably susceptible." "Although extrinsic evidence is not admissible to add to, detract from, or vary the terms of a written contract, these terms must first be determined before it can be decided whether or not extrinsic evidence is being offered for a prohibited purpose." Pacific Gas & Electric Co. v. G.W. Thomas Drayage & Rigging Co., 69 Cal.2d 33, 39

(1968). If the contract "in light of the circumstances" is "fairly susceptible of either one of the two interpretations" sought, the "extrinsic evidence relevant to prove either of such meanings is admissible." Id. at 40.

Under California law, the court must initially consider all parol evidence to determine the parties' intent, and if the proffered parol evidence is consistent with a plausible interpretation of the contract, the court must admit the evidence. If the parol evidence is not in conflict but permits only one conclusion about the contract's meaning, the contract must be interpreted in accordance with that evidence. Parson v. Bristol Development Co., 62 Cal.2d 861, 865 (1965).

The court concludes that the extrinsic evidence presented at trial is in accord with the most plausible meaning of the acquisition contract and establishes that the contracting parties intended that Peters not retain Sugarone plant material following the acquisition and that the acquisition documents transferred to Superior Farming the exclusive right to the Sugarone variety. For this reason, independent of all other conclusions of law made herein, the court concludes that Sun World is entitled to judgment on claims one, three and nine.

In addition, the court was guided by the following principles of California contract law in concluding that Sun World is entitled to judgment on claims one, three and nine. Obvious terms are implied when necessary to effectuate the intent of the parties and, where the parties' negotiation history or

extrinsic evidence shows that terms were unacceptable, the court may not read the rejected terms into the contract. A party's unexpressed intentions regarding the effect of a contract are irrelevant to interpretation of the contract. Because Peters did not participate in the acquisition negotiations or drafting of the acquisition documents, Peters' undisclosed understandings and intentions regarding the contract documents is irrelevant as a matter of law. Furthermore, pursuant to California Civil Code § 1659, "where all the parties who unite in a promise receive some benefit from the consideration, whether past or present, their promise is presumed to be joint and several."

**B. California Agency Law.**

As a matter of California law, "[t]he acts of an agent within the scope of his authority binds the principal." Madden v. Kaiser, 17 Cal.3d 699, 705-706 (1976); see also California Civil Code § 2315 ("an agent has such authority as the principal, actually or ostensibly, confers upon him"). Garabedian's negotiations with Superior Farming as to whether Peters could grow Sugarone vines post-acquisition, Superior Farming's explicit rejection of that request, and Peters' testimony acknowledging that he understood the issue to be "dead", confirms that Garabedian was Peters' agent and that the scope of authority conferred on Garabedian covered Peters' right to retain Sugarone vines following the acquisition. Peters is bound by the deal that was negotiated and executed with his authority. The agreement negotiated and executed by the parties transferred

exclusive control over the Sugarone variety to Superior Farming. For this reason, independent of all other conclusions of law herein, Sun World is entitled to judgment on claims one, three, and nine.

**C. Fixtures Pass with Land as a Matter of California Law.**

Under California law, vines planted on real property are "fixtures" that "pass to a purchaser with the fee of that land." Southern Pacific Co. v. Riverside, 32 Cal.App.2d 380, 386 (1939); California Civil Code §§ 658, 660. Fixtures may be severed from realty, converted to personal property, and not transferred with the sale of land, but this requires a severance agreement. In the absence of an explicit severance agreement, fixtures pass with the land as a matter of law. Id. "It is a general rule that in order for a vendor to reserve the growing crops when the realty is conveyed, there must be a written reservation, and in the absence of such a written reservation, the growing crops pass with the realty." Sweet v. Watson's Nursery, 33 Cal.App.2d 699, 704 (1939). Sun Pacific's admission that Peters did not discuss the terms of the 1972 acquisition with Superior Farming establishes that there was no severance agreement between Peters and Superior Farming. The Bill of Sale signed by Peters explicitly includes vines and growing fruit in the list of transferred items. The 1972 acquisition included all the vines and Peters' removal of some of these vines prior to the acquisition was unauthorized and unlawful. For this reason,

independent of all other conclusions of law herein, Sun World is entitled to judgment on claims one, three, and nine.

**D. Seller's Duty of Disclosure under California Law.**

Pursuant to California law, a seller of real property has a legal duty to disclose undiscoverable facts to a buyer. "[I]t is now settled in California that where the seller knows of facts materially affecting the value or desirability of the property ... and also knows that such facts are not known to, or within the reach of the diligent attention and observation of the buyer, the seller is under a duty to disclose them to the buyer." Shapiro v. Sutherland, 64 Cal.App.4th 1534, 1544 (1998). Any fact that "would have a significant and measurable effect on [the] market value" is deemed material and subject to the duty of disclosure. Assilzadeh v. California Federal Bank, 82 Cal.App.4th 399, 410 (2000). A seller's failure to fulfill the duty of disclosure constitutes actual fraud. Peters was a seller of the Mecca ranch from which he removed the Sugarone vines and he was also a signatory to the Bill of Sale. At the time Peters removed the Sugarone vines from the Mecca ranch, Superior Farming had already completed its inspection of that property and, in any event, a diligent inspection would not have revealed the removal of the small number of vines. The removal of the vines was material because the negotiation documents establish that Superior Farming paid a premium for Garabedian's exclusive varieties. Peters had a duty to disclose the removal of the Sugarone vines from the Mecca ranch. Peters testimony that he

did not have any conversations with Superior Farming personnel prior to the acquisition about the Sugarone variety establishes that Peters did not disclose the removal to Superior Farming prior to the acquisition. Peters' violation of this duty to disclose negates any conclusion that his conduct was lawful. The inclusion of an "as is" clause in the Bill of Sale does not cure the failure to disclose. An "as is" clause does not empower a seller to knowingly alter the condition of an item for sale after the buyer's inspection nor does it exonerate a seller from his obligation to disclose undiscoverable material facts to the buyer. Shapiro v. Hu, 188 Cal.App.3d 324, 333-334 (1986). For this reason, independent of all other conclusions of law here, Sun World is entitled to judgment.

**E. Declaratory Judgment.**

Declaratory relief pursuant to 28 U.S.C. § 2201 is appropriate where "there is a substantial controversy, between parties having adverse interests, of sufficient immediacy and reality to warrant issuance of a declaratory judgment.

By virtue of the 1972 acquisition, Superior Farming purchased "all ... right, title, and interest in and to" the Sugarone variety. Sun World is the successor-in-interest to Superior Farming. Sun World is entitled to a declaration on claim nine that the present possession of Sugarone vines derived from those cuttings taken by Richard Peters from the Mecca ranch in 1972 by Peters and Sun World is unlawful.

**F. Conversion.**

Under California law, conversion is an intentional exercise of dominion over a chattel which interferes with the right of another to control it. DeVries v. Brumbeck, 53 Cal.2d 643, 647 (1960). The elements of a claim of conversion are: (1) the claimant's ownership or right to possession of the property; (2) the opposing party's conversion by a wrongful act or disposition of property rights; and (3) damages. Burlesci v. Petersen, 68 Cal.App.4th 1062, 1065 (1998). Conversion is a strict liability tort. Id.

Superior Farming purchased the exclusive rights to the Sugarone variety by virtue of the 1972 acquisition. Peters' unauthorized and undisclosed retention of the Sugarone vines after the acquisition closed was unlawful, counter-defendants' present possession of Sugarone vines is the direct result of Peters' conversion, and Sun Pacific's sale of 672 boxes of Sugarone grapes at approximately $12 a box damaged Sun World in the amount of $8,064. The court concludes that counter-defendants are liable for conversion pursuant to claim one.

**G. Intentional Misrepresentation.**

In the tort of "fraudulent deceit" set forth in California Civil Code § 1709, the term "deceit" is defined to include "the suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact." California Civil Code § 1710(3). Under California Civil Code §§ 1567 and 1568, an apparent consent to a contract is not real or free when obtained

by fraud and consent is deemed to have been obtained by fraud "only when it would not have been given had such cause not existed." In the tort of "actual fraud" set forth in California Civil Code § 1572, "actual fraud" is defined the "suppression of that which is true, by one having knowledge or belief of the fact" which is "committed by a party to the contract, or with his connivance, with intent to deceive another party thereto ...." California courts use the terms "fraud" and "deceit" interchangeably. Consequently, whether pursued as an independent tort or as part of a claim arising out of a contractual relationship, the elements of fraud are generally the same. The elements of fraud based on suppression of a fact or nondisclosure of a fact are: (1) nondisclosure of material facts, (2) the defendant's knowledge of these facts and of their being unknown to or beyond the reach of the plaintiff, (3) the defendant's intent to induce action by the plaintiff, (4), the plaintiff's inducement by reason of the nondisclosure, and (5) resulting damages.

During negotiations, Peters asked for permission to grow the Sugarone variety after the acquisition was completed. Superior Farming rejected that request and stated that it would not enter into the deal if that provision were included. Peters acknowledged this rejection and there were no further discussions of this point. Nevertheless, on the eve of the closing, Peters secretly took Sugarone cuttings from the Mecca ranch. At the time Peters did this, Superior Farming had already completed its

inspection of the Mecca ranch and, in any event, a diligent inspection would not have revealed the removal. Peters did not disclose the removal even though he understood that Superior Farming intended to purchase the entire business of raising and marketing fruits and grapes and that Superior Farming had rejected his request to grow the Sugarone variety after the acquisition closed. Peters needed the Sugarone cuttings to posses the Sugarone variety after the acquisition. Peters concealed his actions for many years. Peters' failure to disclose his actions was intended to induce reliance by Superior Farming that it was acquiring all of the Sugarone vines and did induce Superior Farming to complete the acquisition to the detriment of Superior Farming. For these reasons, independent of all other conclusions of law here, the court concludes that Peters committed fraud by removing and retaining Sugarone plant material and that Peters' and Sun Pacific's present possession of Sugarone vines is wrongful.

**H. Compensatory Damages.**

The court awards Sun World $8,064.00 as compensatory damages resulting from the claims for conversion in Count One and intentional misrepresentation in Count Three. These compensatory damages are based on Sun Pacific's sale of 672 boxes of Sugarone grapes at approximately $12 a box.

**I. Punitive Damages.**

The Due Process Clause of the Fourteenth Amendment prohibits the imposition of grossly excessive or arbitrary punishments on a

tortfeasor. State Farm Mutual Automobile Insurance Co. v. Campbell, 538 U.S. 408, 416 (2003). In assessing punitive damages, the court must consider (1) the degree of reprehensibility of the defendants' misconduct and (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages awarded, and (3) the difference between the punitive damages awarded and the civil penalties authorized or imposed in comparable cases. State Farm Mutual Automobile Insurance Co. v. Campbell, 538 U.S. 408, 418 (2003). The most important of these considerations is the degree of reprehensibility of the defendants' conduct. Id. at 419.

With regard to the reprehensibility of the defendants' conduct, the court concludes that the harm suffered by Sun World resulted from fraud and deceit and was not caused by mere accident.

With regard to the disparity between the actual or potential harm, although the Supreme Court declined to impose a bright-line ratio which a punitive damages award cannot exceed, Campbell, id., 538 U.S. at 425, the Supreme Court noted that "in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." Id. However, in determining a punitive damages award, courts are permitted to consider the potential, as well as actual, harm to the plaintiff and to increase the ratio where particularly egregious conduct has resulted in only a small amount of compensatory damages. Id. at 425.

Using a single-diget ratio of 9 to 1, the amount of punitive damages would be approximately $72,000.00. However, considering the potential harm to Sun World as well as the particularly egregious nature of the misconduct, the court concludes that an award of punitive damages in excess of that amount is warranted.The parties to the acquisition engaged in lengthy and detailed negotiations wherein Superior Farming paid $7.7 million for, among other things, the exclusive rights to the patented varieties, including the Sugarone variety. By means of fraud and conversion, Peters and Sun Pacific have attempted to deprive Sun World of the property rights in the Sugarone variety that Superior Farming purchased. Peters asked during the negotiations to grow the Sugarone variety after the acquisition closed, which request was rejected by Superior Farming. Nevertheless, on the eve of the closing, Peters secretly removed Sugarone cuttings from the Mecca ranch. Peters did not tell Garabedian of his actions nor did he tell Superior Farming prior to the closing. Peters concealed this conduct for decades until this litigation was commenced, after Sun Pacific agreed to indemnify Peters against all litigation based on the possession, propagation or sale of the Superior Seedless/Sugarone variety. Peters' seizure of the Sugarone cuttings on the eve of the closing and his transfer of those vines with an indemnification agreement to Sun World's competitor created a serious threat to Sun World's exclusive control of the Sugarone variety. Although Sun World has suffered relatively minimal economic damages, Sun Pacific's

wrongful possession of the Sugarone variety and its capacity to commercially exploit that wrongful possession placed Sun World under the threat of immediate and potentially devastating damages in the absence of this judgment. Peters and Sun Pacific knew that the compensatory damages would be minimal while the risks and costs that Sun World would incur in defending its exclusive right to the Sugarone variety would be substantial and immediate. The Sugarone variety is a leading source of revenue and profit to Sun World, which is a $100 million per year corporation attempting to emerge from Chapter 11 bankruptcy. Peters' and Sun Pacific's actions raise a significant threat to the viability of Sun World. In addition, the court concludes that the compensatory damages do not make Sun World whole because, in initiating this litigation, Peters and Sun Pacific have forced Sun World to incur hundreds of thousands of dollars in attorneys' fees. Consequently, the court concludes that Peters' and Sun Pacific's egregious acts resulted in relatively minimal compensatory damages and that an award of $250,000.00 in punitive damages is necessary to achieve the goals of punishment and deterrence.

**J. Costs.**

Sun World is awarded costs in the amount of $27,684.30 pursuant to 28 U.S.C. § 1920, Rule 54(d), Federal Rules of Civil Procedure, and Rule 54-292, Local Rules of Practice, the court concluding that the objections to the requested costs are without merit.

For the foregoing reasons, the following relief is granted in favor of defendant/counter-claimant Sun World International, Inc. and against plaintiff Sun Pacific Farming Cooperative, Inc and counter-defendants Sun Pacific Farming Cooperative, Inc., Sun Pacific Farming Co., Bernie H. Evans III and Richard Peters on Sun World's first claim for relief for conversion, its third claim for relief for intentional misrepresentation, and its ninth claim for relief for declaratory judgment:

1. Counter-defendants, and each of them, and their agents, servants, and employees, and all persons acting under any license or sub-license agreement with them or for them are permanently enjoined from converting, propagating, growing, selling, licensing, distributing, using in any plant breeding program, farming activity or otherwise marketing or exporting Sugarone grapevines, Sugarone vines, Sugarone cuttings and Sugarone derivatives or progeny derived from those cuttings taken by Richard Peters from the Mecca ranch in 1972 (Sugarone Materials) and from holding themselves out as the lawful owner of these Sugarone Materials and are ordered to return to Sun World all Sugarone Materials and any records, charts, formulas, or propagating material related to the Sugarone variety in counter-defendant's possession or control derived from the Sugarone Materials or, at Sun World's election, to destroy all such Sugarone Materials under the supervision and observation of a representative of Sun World, within 60 days of entry of judgment.

2. Pay to Sun World $8,064.00 in compensatory damages.

3. Pay to Sun World $250,000.00 in punitive damages.

4. Pay to Sun World $27,684.03 in costs.

5. The court declares that Sun World has legal title to all Sugarone Materials in counter-defendants' possession, custody, or control as of the date of entry of judgment.

6. The court declares that counter-defendants have no lawful right to possess, control, propagate, market, develop, or transfer Sugarone Materials, that Sun World holds all right, title and interest in the Sugarone Materials, that counter-defendants have no lawful right to hold themselves out as lawful owners or sellers of the Sugarone Materials, that counter-defendants shall provide to Sun World a complete accounting of all Sugarone Materials in the possession, custody or control of counter-defendants or any of them within 60 days of entry of judgment.

Judgment shall be entered by a separate document pursuant to Rule 58, Federal Rules of Civil Procedure.

Dated: June 16, 2006

ROBERT E. COYLE
UNITED STATES DISTRICT JUDGE